

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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**FISCAL IMPACT STATEMENT**

**LS 6682**

**BILL NUMBER:** SB 286

**NOTE PREPARED:** Feb 20, 2007

**BILL AMENDED:** Feb 19, 2007

**SUBJECT:** Environmental Crimes.

**FIRST AUTHOR:** Sen. Kenley

**FIRST SPONSOR:** Rep. Dvorak

**BILL STATUS:** As Passed Senate

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** This bill makes violation of certain environmental statutes or permits a Class D felony if the violation proximately results in specified harm. It requires a court to consider any improper economic benefit received by a defendant, including unjust enrichment, in determining the level of fine to impose.

The bill also provides that a person who makes a material misstatement in an application for a permit or for certain forms of financial assistance commits a Class A misdemeanor. The bill makes falsifying certain data or interfering with monitoring devices a Class A misdemeanor. It makes poisoning a water supply or tampering with a water supply with intent to cause serious bodily injury a Class B felony.

It permits a prosecuting attorney to appoint the Attorney General or a Deputy Attorney General as a special deputy prosecuting attorney to assist in criminal proceedings related to a violation of environmental law. It also repeals current provisions establishing offenses that are superseded by this bill.

**Effective Date:** July 1, 2007.

**Explanation of State Expenditures:** The bill makes certain civil offenders subject to criminal prosecution. The bill also establishes criminal violations and penalties. The difference that the proposed categories will make in terms of state and local expenditures for incarceration and revenues paid for penalties and fines relative to existing violations and penalties is indeterminable. (Also, see *Explanation of Local Expenditures* below.)

A Class B felony is punishable by a prison term ranging from 6 to 20 years, depending upon mitigating and

aggravating circumstances. The average length of stay in DOC facilities for all Class B felony offenders is approximately 3.7 years.

A Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The average length of stay in DOC facilities for all Class D felony offenders is approximately 10 months.

The average expenditure to house an adult offender was \$22,734 in FY 2006. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,139.

**Explanation of State Revenues:** *Criminal and Civil Penalties:* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is \$10,000, \$10,000 for a Class B felony, and \$5,000 for a Class A misdemeanor. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), the judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

The court may also order a person to pay a fine of at least \$5,000 and not more than \$50,000 for each day of violation. If the person has a prior unrelated conviction for an offense that may be punished as a felony, a fine of not more than \$100,000 for each day of violation may be imposed. In determining the amount of a fine imposed for a violation, the court must consider any improper economic benefit, including unjust enrichment, received by the defendant as a result of the unlawful conduct.

*Class A Misdemeanors:* A person who, with intent to defraud, knowingly or intentionally makes a material misstatement in connection with an application for a permit, loan, or other financial assistance commits a Class A misdemeanor. Funds affected include the Wastewater Revolving Loan Program, Drinking Water Revolving Loan Program, Environmental Remediation Revolving Loan Program, State Solid Waste Management Fund, Underground Petroleum Storage Tank Excess Liability Fund, Excess Liability Fund, Hazardous Substances Response Trust Fund, and the Waste Tire Management Fund.

A person who knowingly or intentionally destroys, alters, conceals, or falsely certifies a record that is required to be maintained under the terms of a permit issued by the Department of Environmental Management (IDEM) and may be used to determine the status of compliance commits a Class A misdemeanor.

A person who knowingly or intentionally renders inaccurate or inoperative a recording device or a monitoring device required to be maintained by a permit issued by IDEM commits a Class A misdemeanor.

A person who knowingly or intentionally falsifies testing or monitoring data required by a permit issued by IDEM commits a Class A misdemeanor.

*Class D Felonies:* A person who knowingly, intentionally, or recklessly violates the terms of a law or permit issued by IDEM relating to air pollution control, water pollution control, solid or hazardous waste, the operation of an underground storage tank, state-regulated wetlands, or air pollution control, and discharges a contaminant; if the discharge results in a substantial risk of serious bodily injury; serious bodily injury to an individual; the death of a vertebrate animal; or damage to the environment that renders the environment unfit for human or vertebrate animal life, or causes damage to an endangered, an at-risk, or a threatened species; commits a Class D felony.

The state has the burden of proving that the above violations are the proximate cause of the discharge. It is a defense to a prosecution that the person did not know and could not reasonably have been expected to know that the contaminant released into the air was capable of causing the above results.

*Class A and B Felonies:* A person who, with the intent to cause serious bodily injury, tampers with a water supply; water treatment plant; or water distribution system, commits tampering with a water supply, a Class B felony. However, the offense is a Class A felony if it results in the death of any person. A person who recklessly, knowingly, or intentionally poisons a public water supply commits poisoning, a Class B felony.

**Explanation of Local Expenditures:** *Prosecuting Attorney:* The bill adds that with the consent of the Inspector General, a prosecuting attorney may appoint the Inspector General or a Deputy Inspector General who is licensed to practice law in Indiana as a special deputy prosecuting attorney to assist in any criminal proceeding involving public misconduct. Existing law does not require the consent of the Inspector General. Requiring the Inspector General's consent could affect the number of cases wherein the Inspector General assists in criminal proceedings which could affect local expenditures.

In addition to the above provision, the bill adds that with the consent of the Attorney General, a prosecuting attorney may appoint the Attorney General or a Deputy Attorney General who is licensed to practice law in Indiana as a special deputy prosecuting attorney to assist in any criminal proceeding involving environmental law.

*Criminal Penalties:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

**Explanation of Local Revenues:** *Criminal Penalties:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

**State Agencies Affected:** Department of Correction.

**Local Agencies Affected:** Trial courts, local law enforcement agencies.

**Information Sources:** Indiana Sheriffs' Association, Department of Correction.

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